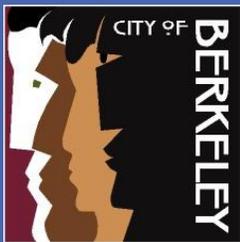


Citywide Affordable Housing Requirements Update



City of Berkeley

Planning Commission

March 2, 2022

Meeting Purpose

Conduct a public hearing on proposed amendments to comprehensively update the City's affordable housing requirements and provide a recommendation to the City Council to:

- Amend Berkeley Municipal Code (BMC) Chapter 23.328 Inclusionary Housing , updating the citywide Affordable Housing Requirements (AHR) in the Zoning Ordinance;
- Repeal existing administration and zoning code sections that refer to affordable housing requirements, BMC Section 22.20.065, and Section 23.312.040(A)(6);
- Rescind Resolution No. 68,074-N.S. related to fees, exemptions, and administration of inclusionary affordable housing and in-lieu programs;
- Adopt a Resolution addressing regulations for a voucher program and establishing an in-lieu fee pursuant to BMC Section 23.328.020(A)(2).

Work To-Date

October 2020:

- Street Level Advisors conducted research, focus groups and stakeholder interviews and solicited feedback on a range of policy issues

May 2021:

- Street Level Advisors prepared a memorandum analyzing potential changes based on Council referrals and stakeholder and public feedback
- Staff and Street Level Advisors presented the proposed changes to the Planning Commission and City Council

Relevant Sections of the Berkeley Municipal Code (BMC)

- BMC 21.28: Condominiums and Other Common Interest Subdivisions
- **BMC 22.20: Mitigations and Fees—Conditions of Approval for Development Projects**
- BMC 23.326: Demolition and Dwelling Unit Controls
- **BMC 23.328: Inclusionary Housing**
- **BMC 23.312: Live/Work**
- BMC 13.76: Rent Stabilization and Eviction for Good Cause

*Note: BMC Sections in **bold text** are addressed in the proposed amendments. Other sections of the BMC will be addressed in a separate process.*

Proposed Changes

1. Consolidate Affordable Housing Requirements
2. Establish a Per-Square-Foot In-lieu Fee
3. Incentivize Extremely Low-Income (30% of AMI) Units
4. Retain a Residual Fee for “Mixed Compliance” Projects
5. Standardize Ownership and Rental Fees
6. Standardize Live-Work Requirements
7. Add a Land Dedication Option
8. Provide a Family-Sized Units Option
9. Remove Exemption for Most Group Living Accommodation (GLA) Projects
10. Change Requirements for Small Projects
11. Cap Annual Rate of Rent Increases
12. Administrative Changes

1. Consolidate and Update Affordable Housing Requirements

CURRENT:

- Rules related to affordable housing requirements in multiple places in the BMC

PROPOSED

- Consolidate requirements of the Affordable Housing Mitigation Fee, Inclusionary Housing and Live/Work Affordable Housing Standards into the same BMC Chapter (23.328)
- Applicable to rental, ownership and Live/Work Projects

1. Consolidate and Update Affordable Housing Requirements (cont'd)

BMC 23.328 INCLUSIONARY HOUSING

- 23.328.010 Findings
- 23.328.020 Definitions
- 23.328.030 Affordable Housing Requirements
- 23.328.040 Waiver or Modification of Affordable Housing Requirements
- 23.328.050 Implementation

1. Consolidate and Update Affordable Housing Requirements (cont'd)

BMC 23.328

INCLUSIONARY HOUSING

- 23.328.010 Findings
- 23.328.020 Definitions
- 23.328.030 Affordable Housing Requirements
- 23.328.040 Waiver or Modification of Affordable Housing Requirements
- 23.328.050 Implementation

- A. Affordable Unit
- B. Affordable Housing Compliance Plan
- C. Area Median Income
- D. Applicant
- E. Housing Development Project
- F. Housing Trust Fund
- G. Lower-Income Household
- H. Residential Unit
- I. Very Low-Income Household

1. Consolidate and Update Affordable Housing Requirements (cont'd)

BMC 23.328

INCLUSIONARY HOUSING

- 23.328.010 Findings
- 23.328.020 Definitions
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- 23.328.050 Implementation

- A. Requirement to Construct Affordable Units
- B. Option to Pay In-Lieu Fee
- C. Land Dedication Option
- D. Optional Density Bonus for Small Projects

2. Establish a Per-Square-Foot In-lieu Fee

CURRENT:

- For rental projects, developers are charged in a mitigation fee of \$39,746 per unit. The per unit fee is reduced for every on-site unit provided.

PROPOSED

- A Per Square-Foot Fee. Developers are charged an in-lieu fee of \$45 per square-foot. The per square-foot fee is reduced for each affordable unit.
- All In-Lieu Fees are paid prior to the issuance of a Certificate of Occupancy (or if COO is not required, prior to occupancy of the Housing Development).

3. Incentivize Extremely Low- Income Units (30% of AMI)

CURRENT:

- 40% of Very Low-Income (VLI) units in a project must be offered to Housing Choice voucher holder and 40% must be offered to Shelter+Care voucher holders.

PROPOSED

- Require all of the required VLI units be offered to voucher holders (50% to Housing Choice voucher holders and 50% to Shelter+Care voucher holders) before being marketed to other income eligible households.

4. Retain Residual Fee for “Mixed Compliance” Projects

CURRENT:

- Developers are required to pay the Affordable Housing Mitigation Fee.
- In lieu of the fee, developers may choose to provide 20% of total project units as Affordable Units: 10% of total units must be for LI residents and 10% of total units must be for VLI residents.

PROPOSED

- As authorized by AB 1505, the proposed ordinance requires inclusionary units and allows developers to select to pay an in-lieu fee or land dedication.
- Maintains current requirement as noted above (at least 20% of Residential Units are Affordable Units, half for LI residents and half for VLI)

Note: LI = Low-Income, VLI = Very Low-Income

5. Standardize Ownership and Rental Fees

CURRENT:

- For ownership projects, the in-lieu fee is 62.5% of the difference between the market price and the affordable price for each unit. This makes the fee for ownership project higher than the fee for comparable rental projects.

PROPOSED

- Apply the same \$45 per square foot fee to rental and ownership projects. Continue to require different income targeting for ownership units.

6. Standardize Live/Work Requirements

CURRENT:

- Live/Work projects are exempted from current inclusionary and AHMF requirements
- 20% of Live/Work units are required to be affordable to Low-Income residents (80% AMI) with no alternative compliance options

PROPOSED

- Remove Live/Work exemption
- Preserve rule requiring affirmative marketing to income-eligible trade workers

7. Add a Land Dedication Option

CURRENT:

- To comply with the affordable housing requirements, developers must provide units on-site or pay an in-lieu fee.

PROPOSED

- The proposed ordinance includes a land dedication option which authorizes the City Manager to approve the donation of land to the City or a non-profit housing developer.
- The value of the land must be equal or greater to the in-lieu fee owed.

8. Provide a Family-Sized Units Option

CURRENT:

- Recent trends for market-rate projects have yielded increasingly smaller unit sizes. The goal would be to incentivize the construction of 2BR or larger (“family-sized units”).

PROPOSED

- Developers have an additional option to fulfill City’s affordable housing requirements by providing 2BR or 3BR Affordable Units whose gross floor area is equivalent to 20% of the project.

9. Remove Exemption for Most Group Living Accommodation (GLA) Projects

CURRENT:

- GLA are currently exempt from inclusionary and fee requirements.

PROPOSED

- Most GLAs would be subject to inclusionary and fee requirements (except for fraternities, sororities and other specially designated units recognized by the University of California).
- No Affordable Unit may have more than 3 BR

10. Change Requirements for Small Projects

CURRENT:

- Projects with 1-4 units are exempt from fees and inclusionary requirements

PROPOSED

- Eliminate exemption for 1-4 unit projects
- Introduce tiered fee for small projects (less than 12,000 sf) that reduces fee by \$2 per sf for each 1000 sf
- Optional density bonus for small projects that just pay in-lieu fee

| Gross Residential Square Feet | Fee per Square Foot |
|-------------------------------|---------------------|
| 12,000+ | \$45 |
| 11,000-11,999 | \$43 |
| 10,000-10,000 | \$41 |
| 9,000-9,999 | \$39 |
| 8,000-8,999 | \$37 |
| 7,000-7,999 | \$35 |
| 6,000-6,999 | \$33 |
| 5,000-5,999 | \$31 |
| 4,000-4,999 | \$29 |
| 3,000-3,999 | \$27 |
| 2,000-2,999 | \$25 |
| 1,000-1,999 | \$23 |
| <1,000 | \$21 |

11. Cap Annual Rate of Rent Increases

CURRENT:

- Current rules tie rents to changes in the Area Median Income (AMI).

PROPOSED

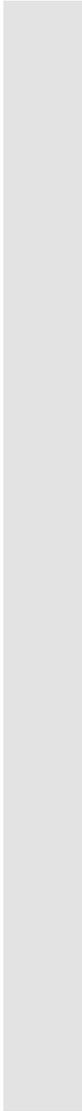
- Limit annual increase in BMR affordable rents for occupied units to no greater than increase in the Consumer Price Index for All Urban Consumers (CPI-U) for the twelve month period ending the previous December 30 but not to exceed the corresponding increase in AMI for the same calendar year.

Note: BMR = Below Market Rate

12. Administrative Changes

PROPOSED

- Require compliance plans
- Authorize administrative citations
- Deduct required fees/costs from gross rent
- Increase the amount of administrative set-aside from 10% to 15%



Discussion